IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 606.

ADELHEIDT AUGUSTA NINA EDWINA VON HARDENBERG AND IRMGARD STELLA VON ALTEN,

Petitioners,

vs.

J. HOWARD McGRATH, ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

REPLY TO BRIEF IN OPPOSITION.

Since the filing of the petition for certiorari, there has come to the attention of petitioners an additional reason for granting the writ of certiorari. It consists of a conflict of opinion between two courts of last resort of sister states. The conflict arises from an opinion of the Supreme Court of Pennsylvania in the case entitled *United States* v. *Board of Finance*, 85 Atl. (2d) 156.

In that case the Supreme Court of Pennsylvania had before it an attempt by the attorney general to vest the interest of unknown heirs of a decedent in the latter's

estate. The estate had been turned over to the state of Pennsylvania, pending discovery of the heirs. The attorney general claimed he had a right to vest even though the heirs were unknown or non-existent. He claimed, as he does in the instant case, that the judiciary cannot question his act when he has once issued his administrative fiat in the guise of a vesting order. The Supreme Court of Pennsylvania disagreed and, in effect, held that the courts are not impotent to inquire into the sufficiency of a vesting order. It did inquire into the order and found that the attorney general had no right to seize the estate, and held the vesting orders were ineffective and void. In the instant case the Supreme Court of Illinois held it could not inquire into the purposes of a seemingly unwarranted and unnecessary seizure. Thus, there exists, as an additional reason for certiorari, a conflict of opinion between two state courts of last resort.

The attorney general cited many cases as authority for his right to vest after the termination of hostilities. As a convenience to the court, we have prepared an analysis of his cases in order that it may be readily seen that in all of them, with one exception, the courts were concerned with the exercise of a war power during actual hostilities. In that one exception, there was no contention that the vesting order was not valid. That analysis is as follows:

Analysis of Cases Cited by Attorney General.

Miller *vs.* United States	Vesting during hostilities of Civil War.
Central Trust *vs.* Garvan	Libel suit filed in November, 1918, to reach deposit of insurance company to do business.
Stoehr *vs.* Wallace	Vesting order issued April, 1918.
U. S. *vs.* Chemical Foundation	Concerns sale of patents vested during war. Validity of vesting order conceded.
Cummings *vs.* Deutsche Bank	Suit for return of property seized during the war.
Silesian-American Corp. *vs.* Clark	Vesting order issued November 17, 1942.
Commercial Trust Co. *vs.* Miller	Vesting order entered June 19, 1918.
Feyerabend *vs.* McGrath	Suit to recover property under a section of the act which related to World War I only. There was no contention that the vesting order was not valid. Vesting 1947 and 1948.
In re Miller	Vesting order entered July 30, 1918.
Salamandra Ins. Co. *vs.* New York Life Ins. Co.	Vesting order entered Oct. 15, 1918.
Ludecke *vs.* Watkins	Petitioner arrested December 8, 1941, interned February 9, 1942. No vesting.
Woods *vs.* Miller Co.	Rent case; no vesting.
Fleming *vs.* Mohawk	Issuance of subpoena during hostilities; no vesting.
Lehigh Valley R. Co. *vs.* Russia	Re fire loss, July 30, 1916. No vesting.
U. S. *vs.* Watkins	Interment order issued 1943. No vesting.
Clark *vs.* Allen	Vesting order issued 1943.
Great Northern Ry. *vs.* Sutherland	All demands were made during World War I.

It will be thus seen that there is no authority for the unwarranted and unnecessary seizure of petitioners' property. The attorney general stands in defiance of the judiciary and claims his acts cannot be inquired into. That state of mind should be changed by an opinion concerning the power of the judiciary.

Conclusion.

Because of the importance of the issues involved, it is humbly requested that certiorari be granted.

Respectfully submitted,

ROLAND TOWLE,
NORMAN J. BARRY,
Counsel for Petitioners.